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APPLICATION NO.	FILING DATE	FIRST NAME INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/887,702

03/01/2001

Philip K. Zetlow

5183USAD1

2277

75901

08/05/2003

John A. O'Toole
P.O. Box 1113
Minneapolis, MN 55440

EXAMINER

CORBIN, ARTHUR L.

ART UNIT

PAPER NUMBER

1761

DATE MAILED 08/05/2003

Please find below and or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art. Unit

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE

MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

If the period for reply specified above is less than thirty (30) days a reply within the statutory minimum of thirty (30) days will be considered timely.

If NO period for reply is set forth above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.

Failure to reply within the set or extended period for reply will be statutorily cause the application to be ABANDONED (35 U.S.C. § 133).

A reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

Responsive to communication(s) filed on

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 111, 453 O.G. 213.

Disposition of Claims

1 Claim(s)

is/are pending in the application.

Of the above claim(s)

is/are withdrawn from consideration.

Claim(s)

is/are allowed.

Claim(s)

is/are rejected.

Claim(s)

is/are objected to.

1 Claim(s)

are subject to restriction or election requirement

Application Papers

The proposed drawing correction, filed on is approved disapproved.

The drawing(s) filed on is/are objected to by the Examiner

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

All Some* None of the:

Certified copies of the priority documents have been received.

Certified copies of the priority documents have been received in Application No.

Copies of the certified copies of the priority documents have been received

in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received:

Attachment(s)

Information Disclosure Statement(s), PTO-1449, Paper No(s).

Interview Summary, PTO-413

Notice of Reference(s) Cited, PTO-892

Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948

Other

Office Action Summary

Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 17-35, drawn to a system for processing one rope of aerated confectionery foam, classified in class 425, subclass 131.1
 - II. Claims 36-40, drawn to a flake composed of aerated confectionery foam, classified in class 426, subclass 660.
2. The inventions are distinct, each from the other because:
3. Inventions I and II are related as apparatus and product made. The inventions in this relationship are distinct if either or both of the following can be shown: (1) that the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making a different product or (2) that the product as claimed can be made by another and materially different apparatus (MPEP § 806.05(g)). In this case the apparatus as claimed is not an obvious apparatus for making the product, and the apparatus as claimed can be used to make a different product e.g., a bread dough rope
4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
5. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143)

6 A telephone call was made to Mr. O'Toole on July 30, 2003 to request an oral election to the above restriction requirement, but did not result in an election being made.

7 Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

8 Any inquiry concerning this communication from the examiner should be directed to Arthur Corbin whose telephone number is (703) 308-3850. The examiner can generally be reached on Tuesday--Friday from 10 a.m. to 7:30 p.m. and on alternate Mondays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3959. The fax phone numbers for the organization where this application is assigned are (703) 872-9310 for regular communications and (703) 305-7115 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-0661.

A. Corbin/dh
August 4, 2003

ARTHUR L. CORBIN
PRIMARY EXAMINER